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November 21, 2019

Via Electronic Filing

The Honorable Magistrate Judge Robert W. Lehrburger
U.S. District Court Southern District of New York
500 Pearl St
New York, NY 10007

Denied (for
reasons stated
in Dkt. 51.)

SO ORDERED:

11/22/19

Re: *Basurto et al v. Eda Food Inc. et al* - ~~Non-Sovereign Extension~~
Case No.: 1:18-cv-08858-AJN ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dear Honorable Judge Lehrburger:

This law firm represent the Defendants Eda Food Inc., Karena Foods Inc. and Gary Tulsiani (together, the "Defendants") in the above-referenced action.

Pursuant to Your Honor's Individual Motion Practice Rules I(A) and III(B), this letter respectfully serves to address Plaintiffs' letter submission on November 19, 2019 [Dckt. No. 49].

By way of background, On November 11, 2019, Plaintiffs' counsel advised the undersigned and the Court that two of the named Plaintiffs – Jesus Angel Basurto ("Basurto") and Jose Jaime Reyes Patricio ("Patricio") have ceased communicating with their office, and that attempts to regain contact have proven unsuccessful. [See Dckt. No. 44]. On November 12, 2019, Plaintiffs' counsel represented to the undersigned in writing that they intend to withdraw as counsel for Plaintiffs Basurto and Patricio. [See Dckt. No. 45].

However, at the November 13, 2019 Conference, Plaintiffs' counsel represented to the Court that they will not be withdrawing as counsel for Plaintiff Basurto. Plaintiffs' counsel further represented to the Court that they lost contact with a *third* Plaintiff – who failed to appear on the November 13, 2019 Conference.

Your Honor then directed Plaintiffs' counsel to, "file either (a) a sworn affidavit from Plaintiff Basurto that he remains a plaintiff in this case, wishes to continue prosecuting it, and has provided full settlement authority to Plaintiff counsel, or (b) a motion to withdraw from representation of Mr. Basurto." [See Dckt. No. 46].

On November 19, 2019, Plaintiffs' counsel filed a letter in response to Your Honor's directive. [Dckt. No. 49].

Defendants respectfully submit that the November 19, 2019 letter should not be considered for purposes of the Court's November 13, 2019 directive because a notary did not actually witness Basurto sign his affidavit.

Under New York law, an affidavit is properly notarized when signed in the presence of a notary. See *Sanchez v. Abderrahman*, 2014 WL 4919153, at *3 (E.D.N.Y. 2014), *report and recommendation adopted as modified on other grounds*, 2014 WL 4919258 (E.D.N.Y. 2014) (noting that “[o]ne of the principal functions of a New York notary is to verify the identity of a person signing a document”); *Edwards v. Rockaway Storage, Inc.*, 924 N.Y.S.2d 308 (Sup. Ct. 2008) (explaining that notarization is evidence “that the document was affirmed and signed *before an authorized official*”) (emphasis added). An affidavit that has been signed by a notary is presumed to have been properly executed. *First Indem. of Am. Ins. Co. v. Shinas*, 2009 WL 3154282, at *6 (S.D.N.Y. 2009).

The fact that three (3) Plaintiffs have inexplicably lost contact with counsel at the eve of the Court-Ordered Settlement Conference is highly troubling. The unnotarized letter also raises concerns regarding Plaintiff Basurto’s intentions in whether he truly wishes to maintain his claims, and whether he has truly provided full settlement authority to Plaintiffs’ counsel.

In light of the foregoing, Defendants respectfully request that Your Honor direct Plaintiffs’ counsel to:

- (a) file a properly notarized affidavit from *all* Plaintiffs that they each remain a plaintiffs in this case, wish to continue prosecuting their claims, will be appearing in-person at the upcoming Settlement Conference, and have provided full settlement authority to Plaintiffs’ counsel; or
- (b) file a motion to withdraw as representation from Plaintiffs.

Thank you, in advance, for your time and attention.

Respectfully submitted,

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Cc: Plaintiffs’ counsel (via ECF)